



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

October 27, 2008

Torsten Clausen
Director, Office of Retail Market Development
Illinois Commerce Commission
160 North La Salle Street, Suite C-800
Chicago, Illinois 60601-3104

Dear Mr. Clausen:

Per your request, enclosed are the reply comments of the People of the State of Illinois to the questions presented by your office to participants in the Senate Bill 1299 workshops. Please feel free to call me with any additional questions or clarifications, and thank you for the opportunity to provide these comments.

Sincerely,

Kristin Munsch
Assistant Attorney General
Illinois Attorney General's Office
100 W. Randolph St., 11th Fl.
Chicago, IL 60601

cc: Janice Dale, Chief, Public Utilities Bureau
Christy Pound, Office of Retail Market Development
Joseph Fallah, Office of Retail Market Development

Enc.

The People of the State of Illinois, by and through Lisa Madigan, Attorney General of the State of Illinois, submit these comments in response to a request from Illinois Commerce Commission Staff (Staff). These comments are limited in scope, and do not address every question presented by Staff in its initial request. The People reserve the right to address those questions, and any other issue which arises related to the implementation of Senate Bill (S.B.) 1299, during future workshops or docketed proceedings.

The enclosed comments are not meant to represent a final, or legal, opinion on any question presented by Staff in its request. Instead, the People hope these comments will provide Staff and other interested parties with a better understanding of the People's concerns regarding the competitive sale of electricity to residential customers. The development of a competitive residential market for electricity must go hand in hand with the development of customer awareness and understanding on how electricity is priced and sold. These workshops present an opportunity to bring transparency and clarity to market participants in the form of Illinois Commerce Commission (ICC) rules governing supplier obligations, ICC oversight and customer protections.

Section I, Part I: Benefits and Concerns Related to Residential Electric Choice

The People have many concerns regarding whether the supposed benefits of retail electric competition – lower prices for electricity supply, an increased number of renewable supply products, and greater payment plan flexibility – will be realized for Illinois residential customers. As workshop participants discuss the best means to introduce residential customers the “Utility Consolidated Billing/ Purchase of Receivables” (UCB/ POR) and customer referral programs, it is the experience of the transition to a competitive market in natural gas market which provides the clearest example of the pitfalls which may lie ahead:

- Natural gas customers were confronted with aggressive, and in some instances fraudulent, marketing tactics on the part of alternative natural gas suppliers.
- Customers participating in the market lacked understanding of the most basic facts regarding the price of natural gas, how that gas was delivered to their homes, and how to compare alternative offers to their traditional utility service.
- Customers found it difficult, if not impossible, to compare prices and products, or to understand their contract's terms and conditions.
- Compounding these problems, customers were often unable to exit relationships with alternative natural gas suppliers without significant penalties. Contract terms were lengthy and termination fees punitive.

As many parties noted in their Initial Comments to the Office of Retail Market Development (ORMD), a much more successful transition to a competitive retail electric market will depend upon customers who understand how such a market works, who are clear about the obligations of traditional electric utilities, and who can compare easily the prices, services and payment options presented by an ARES. Customers must be aware of how they can verify offers, resolve disputes and return to traditional, bundled service. The People firmly believe that measures to address these issues, through consumer education campaigns and consumer protection rulemakings, must be in place before the introduction of the S.B. 1299 programs.

All stakeholders participating in these workshops have a responsibility to ensure that this transition is not driven by a rush to implementation but is designed to create the most positive customer experience. The precise responsibilities of each stakeholder will evolve as these workshops progress and specific program details are presented.

The People agree with those initial comments that placed the ICC, through the ORMD, at the center of the development and management of the regulatory framework for residential retail competition.¹ Among other things, the ICC has responsibility for:

- ARES certification, including investigation, review and compliance monitoring. This would also include revocation of certification, which could result from either the Commission's own investigation or upon the complaint of an affected party and monitoring the interaction of retail sales affiliates with parent utility holding companies or distribution utilities.
- Ensuring compliance with applicable contract, service, and billing requirements, including credit, deposit and collection practices under the Public Utilities Act and ICC rules. This includes handling complaints and resolving disputes between customers, suppliers and utilities. The People believe that appropriate dispute resolution procedures, including remedies, should be the subject of a rulemaking before the ICC prior to such time as the UCB/ POR programs' launch.
- Publishing information on ARES programs, pricing, consumer complaint data, consumer education materials and any other required reporting. The People agree with many of the initial comments that suppliers should be required to provide updated product information, including all appropriate disclosures, on a website maintained by the ICC.
- Conducting rulemakings to create consumer protection measures and consumer education programs, as discussed in more detail below.

The utilities serve as many residential customers' primary contact for information about retail electric service, and have a responsibility to ensure that their customers receive accurate information regarding available retail options, ensure ARES operating in their territory follow the obligations laid out in the service agreements between the utility and ARES, and ensure customers can terminate a relationship with an ARES through the utility or the ARES itself. The People support the establishment and use of a "Do Not Contact" list maintained by each utility and shared with any ARES operating in that utility's territory. Furthermore, information from the utilities regarding customer inquiries and complaints should be regularly shared with the ICC and Illinois Attorney General's Office so that consumer education and protection measures can be put in place to respond to customer concerns and experiences.

Section I, Part III: Cost Recovery Options

The costs of S.B. 1299 implementation should be the primary responsibility of the beneficiaries of S.B. 1299: the ARES community. No alternative financing proposal for the costs

¹ However, the ICC's obligations in this regard are exclusive of the broad jurisdiction of the Illinois Attorney General's Office, which enforces numerous state laws designed to protect consumer interests in a transparent and competitive retail market for electricity.

of consumer education programs has yet been suggested, leading the People to understand that the ARES community believes such costs are the sole responsibility of all customers eligible to participate in the UCB/POR, program. Furthermore, the People understand that all eligible customers are also going to be asked to finance bill redesigns from at least one utility.

S.B. 1299 makes clear that while certain program administration and start-up costs associated with implementing the UCB/POR program must be recovered in the 'discount' rate offered for the purchase of receivables²; additional costs associated with the implementation of S.B. 1299 should be recovered from the ARES themselves.

Section II, Part I: Consumer Education Programs

Consumer education on a variety of topics related to the sale and delivery of electricity is critical to ensuring residential customers receive any of the benefits retail electric competition may have to offer. Over the coming months, all stakeholders in this process – utilities, consumer advocates, ICC Staff and the ARES community – must craft a consumer education campaign that prepares residential customers to understand and best respond to offers from ARES. This campaign should include a variety of media around the state and include mandatory consumer education campaigns from all utilities. The focus of this campaign should be to educate residential consumers on the basic concepts related to the buying, selling and delivery of electricity. The costs of this campaign should be funded by the ARES community.

Along with many of the parties who filed initial comments, the People support the idea of a campaign that utilizes a web-based tool that provides current product information, past pricing information, required disclosures and consumer education resources. As examples, the Texas and New York "Power to Choose" websites are good starting points for the development of such a tool in Illinois. However, the People also recognize that many customers in Illinois lack ready access to the Internet, and believe that alternative media must be used to reach those customers. It is important for all relevant state agencies and consumer groups to be involved in not only creating these tools, but in sharing publicly the results of the education campaign with workshop participants and on the ORMD webpage. This would include sharing data regarding website usage, phone calls, complaints and information requests.

Section II, Part III: Uniform Disclosures

As Staff notes in its questions, there are examples of online consumer education and information web sites which would allow consumers to compare offers from utilities and ARES. Customers should be able to compare prices on an "apples-to-apples" basis. The People agree that looking at examples such as Ohio's "Apples to Apples"³ website is an effective way to capitalize on the retail competition experience of other areas. These disclosures, and how these

² The price the utility pays for receivables is discounted by a rate meant to reflect the utility's historical bad debt and any reasonable start-up costs and administrative costs associated with the utility's purchase of receivables. See 220 ILCS 5/16-118.

³ The Public Utilities Commission of Ohio ("PUCO") website includes "Apples to Apples" charts intended to provide consumers with a snapshot comparison of current natural gas and electric supplier price options and contract terms. The PUCO updates the *Apples to Apples* charts on a regular basis and verifies each supplier offer to ensure accuracy.

disclosures are shared with eligible retail customers, should be created as part of an ICC rulemaking focused on customer education and protection.

At a minimum, a supplier's price structure must be disclosed in cents per kWh for 3-4 common usage levels (e.g. 500, 1000 and 2000 kWh levels for residential customers). A uniform series of definitions related to ARES product offers, such as a universal definition of a "fixed price" or "fixed bill" plan, should be posted on any customer comparison website or educational material. Additional mandatory disclosures should include:

- Special Offers: Any one-time cash rebates or other price inducements – such as the statutory two-month discount. It must be clearly marked and stated, however, that these inducements are not included in the disclosure of the average electricity price.
- Contract Terms: The contract duration and whether the price is fixed or variable over the life of the contract. Other important terms that should be shown are penalties for early termination, late fees or other extra charges.
- Pricing: Any calculations used to set the average price advertised. For example, prices for time-of-use rates should show usage levels and corresponding average prices. If a supplier uses variable prices which change based upon a specific index, the disclosure must name the index and show prices reflecting a recent period or project under a uniform set of assumptions.
- Environmental Disclosures: The fuel mix used in meeting customer supplies based on a historical record. Additionally, depending upon the type of product being offered, a supplier's generation source emissions should be expressed. When put in a form comparing this information to average regional emissions of all generating sources, customers could then compare a supplier's emissions profile with other power generators.

The People propose that this information be included in an "Electricity Facts Label," which would disclose some basic combination of price, fuel mix, emissions or other required items and would appear in a supplier's printed advertisements and written promotional materials. The goal of any such disclosure statement is to enable customers to compare prices, terms and conditions offered by various suppliers. As such, these disclosures must reflect current offerings from each supplier, must be freely available on supplier and ICC websites, and must be offered to potential customers at the point of sale.

Contract Terms and Conditions

The disclosures discussed above are not intended as substitutes for the disclosure of contract terms and conditions, or terms of service, at the point a customer selects an ARES. The terms and conditions must be stated in plain language, in an easy-to-read format, and must include the following information:

- All material terms of the contract, including pricing method, fees and complaint procedures.
- All additional fees, including early termination penalties or late fees.
- Any applicable deposit policy.
- Collection procedures, including right to payment arrangements and special programs available for low-income customers, if any.

- Supplier's dispute or complaint handling policy, including contact information for the ICC.
- Limitations and disclaimers of warranties.
- Customer's right of rescission and how to exercise that right.

Section II, Part IV: Reporting

The People believe that any request for confidential treatment of required reports, including annual call center reports, should be carefully evaluated by the ICC. Annual public reports including customer switching information, ARES market participation, average product information, customer complaints, uncollectible data, etc., should be made available to the ICC as part of the ORMD's annual reporting on the development of a competitive retail market. The ORMD should also report on consumer education campaigns, including cost and distribution information and ORMD website performance data.

Section II, Part V: Sharing of Customer Information

The People do not believe Illinois law allows Illinois utilities to release any customer specific billing or usage information as envisioned by any of the questions in this section.